

REMARKS

This Amendment is submitted in reply to the non-final Office Action mailed on April 12, 2007. No fee is due in connection with this Amendment. The Director is authorized to charge any additional fees which may be required, or to credit any overpayment to Deposit Account No. 02-1818. If such a withdrawal is made, please indicate the Attorney Docket No. 115808-520 on the account statement.

Claim 9 is pending in this application. Claims 1-8 and 10-48 were previously canceled. In the Office Action, Claim 9 is rejected under 35 U.S.C. §112, first paragraph, 35 U.S.C. §112, second paragraph, and 35 U.S.C. §102. In response, Claim 9 has been amended. The amendment does not add new matter. In view of the amendment and/or for the reasons set forth below, Applicants respectfully submit that the rejections should be withdrawn.

In the Office Action, Claim 9 is rejected under 35 U.S.C. §112, first paragraph, as containing subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. Specifically, the Patent Office alleges that the specification, in light of the part, provides insufficient guidance that the skilled artisan could identify effective amounts of the components across the entire breadth of the claim without undue experimentation. See, Office Action, page 3, lines 15-18. In response, Claim 9 has been amended to recite, in part, a nutritionally complete pet food comprising 1) at least one probiotic lactic acid bacterium, or a culture supernatant thereof, present in an ingestible carrier in an amount of at least 10^5 cfu/g, 2) at least one yeast present in the carrier in an amount of at least 10^5 cfu/g, and 3) at least one synthetic or natural carotenoid with or without provitamin A activity present in the carrier in an amount of from about $10^{-12}\%$ to 20% by weight. The amendment is supported in the specification at, for example, page 6, lines 11-13; page 6, lines 22-25; and page 7, lines 1-2. Accordingly, Applicants respectfully submit that the skilled artisan could identify effective amounts of the components across the breadth of the claim so as to practice the presently claimed subject matter without any undue experimentation. Based on at least these noted reasons, Applicants submit that Claim 9 fully complies with 35 U.S.C. §112, first paragraph.

Accordingly, Applicants respectfully request that the rejection of Claim 9 under 35 U.S.C. §112, first paragraph be withdrawn.

In the Office Action, Claim 9 is rejected under 35 U.S.C. §112, second paragraph as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicants regard as the invention. Specifically, the Patent Office asserts that Claim 9 is indefinite in the recitation of “an amount effective to photoprotect a pet of [three components] in an ingestible carrier” because it is not clear whether Claim 9 requires an amount of each of the individual components effective for the photoprotection or an amount of the entire composition effective for photoprotection. See, Office Action, page 6, lines 5-8. In response, Applicants have amended Claim 9 to recite, in part, amounts of each of the three components in the presently claimed pet food, as discussed herein above. In view of the amendment, Applicants respectfully submit that amounts for each of the components have been clarified and that the rejection under 35 U.S.C. §112, second paragraph is thereby rendered moot. Based on at least these noted reasons, Applicants submit that Claim 9 fully complies with 35 U.S.C. §112, second paragraph.

Accordingly, Applicants respectfully request that the rejection of Claim 9 under 35 U.S.C. §112, second paragraph be withdrawn.

In the Office Action, Claim 9 is rejected under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 6,156,355 to Shields, Jr. et al. (“*Shields*”). In view of the amendments to independent Claim 9, Applicants respectfully request that the rejection be reconsidered and withdrawn.

As amended, independent Claim 9 recites, in part, a nutritionally complete pet food comprising 1) at least one probiotic lactic acid bacterium, or a culture supernatant thereof, present in an ingestible carrier in an amount of at least 10^5 cfu/g, 2) at least one yeast present in the carrier in an amount of at least 10^5 cfu/g, and 3) at least one synthetic or natural carotenoid with or without provitamin A activity present in the carrier in an amount of from about $10^{-12}\%$ to 20% by weight.

In contrast, *Shields* fails to disclose or suggest each and every limitation of independent Claim 9. For example, *Shields* fails to disclose or suggest a nutritionally complete pet food comprising 1) at least one probiotic lactic acid bacterium, or a culture supernatant thereof, present in an ingestible carrier in an amount of at least 10^5 cfu/g, 2) at least one yeast present in the carrier in an amount of at least 10^5 cfu/g, and 3) at least one synthetic or natural carotenoid

with or without provitamin A activity present in the carrier in an amount of from about $10^{-12}\%$ to 20% by weight, as is required, in part, by currently amended Claim 9.


For at least these noted reasons, Applicants respectfully submit that *Shields* does not teach, suggest, or even disclose all of the elements of independent Claim 9 and thus, fails to anticipate the claimed subject matter.

Accordingly, Applicants respectfully request that the anticipation rejection with respect to Claim 9 be reconsidered and withdrawn.

For the foregoing reasons, Applicants respectfully request reconsideration of the above-identified patent application and earnestly solicit an early allowance of same.

Respectfully submitted,

BELL, BOYD & LLOYD LLC

BY 
Robert M. Barrett
Reg. No. 30,142
Customer No.: 29156

Dated: July 9, 2007